

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0938**

State of Minnesota,
Respondent,

vs.

Ron Wesley Epps,
Appellant.

**Filed August 28, 2023
Affirmed
Gaïtas, Judge**

Hennepin County District Court
File No. 27-CR-21-3778

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Anna R. Light, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and
Gaïtas, Judge.

SYLLABUS

In a criminal case, a defense attorney's failure to challenge a defendant's competence to proceed is deficient representation if a reasonably skilled attorney would have doubted the defendant's competence under the circumstances.

OPINION

GAÏTAS, Judge

Appellant Ron Wesley Epps challenges his conviction, following a guilty plea, for violating a domestic-abuse no-contact order (DANCO). He argues that he was deprived of his constitutional rights to due process and the effective assistance of counsel when neither the district court nor his own attorney sought an evaluation of his competence to proceed. Because the district court did not violate Epps's right to due process by not ordering a competency evaluation on its own initiative, and Epps's attorney did not provide ineffective assistance of counsel by not requesting a competency evaluation, we affirm.

FACTS

A DANCO prohibited Epps from having contact with T.R. During the winter of 2021, Epps called T.R. 29 times from jail. Based on these phone calls, respondent State of Minnesota charged Epps with six counts of violating the DANCO.

A public defender represented Epps. With the assistance of his attorney, Epps entered into a guilty-plea agreement with the state. In exchange for Epps's guilty plea to one count of violating the DANCO, the state agreed to dismiss the remaining counts, to recommend Epps's immediate release from jail pending sentencing, and to seek the presumptive sentence of probation at the sentencing hearing. The state would also request a probationary DANCO at sentencing that would prohibit Epps from having contact with T.R. while on probation.

Guilty Plea and Sentencing Hearings

In March 2021, Epps, his attorney, and the prosecutor appeared before the district court for a guilty-plea hearing. Due to the COVID-19 pandemic, the hearing occurred remotely on an online platform.

After the prosecutor placed the plea agreement on the record, Epps's attorney explained the agreement to Epps in more detail and asked Epps whether he understood the terms of the agreement. Epps stated, "Yes, I think I understand," and he told the district court that he wished to go forward with the guilty plea. The district court emphasized to Epps that "it's very important that you understand everything," and encouraged Epps to ask questions at any point during the hearing if he was having difficulty understanding. Epps acknowledged his understanding that he would not be permitted to have contact with T.R. before sentencing, and that the no-contact requirement would likely continue after sentencing, although he questioned the reason for imposing a probationary DANCO if T.R. wanted contact. Nonetheless, he assured the district court that he felt comfortable pleading guilty.

The district court told Epps that it could only accept guilty pleas "from people who really are guilty," and asked, "Are you actually guilty, or are you just pleading to get out of jail?" Epps began to describe the circumstances of his phone calls to T.R., explaining that he believed another lawyer had given him permission to call T.R. But the district court interrupted and asked Epps to answer the question before him. Epps confirmed that he was pleading guilty because he was guilty.

With the assistance of his attorney, Epps then pleaded guilty. After being sworn in, he agreed that he had reviewed a guilty-plea petition with his attorney the preceding day, “line by line and page by page.” He acknowledged that he understood everything in the plea petition, including the rights that he was giving up by pleading guilty. During this exchange, Epps again tried to explain that he had “permission to call [T.R.]” But he confirmed his understanding that he was waiving his trial rights and admitting guilt. Epps admitted that he had called T.R. from the jail on December 28 in violation of a DANCO, and that he had prior convictions for violating a DANCO. He told the district court, “I’m pleading guilty because I did place that call.”

The district court found that Epps “knowingly, intelligently, voluntarily gave up trial rights and gave [the district court] a sufficient factual basis to find [Epps] guilty.” A sentencing hearing was scheduled to occur approximately one month later. The district court told Epps, “I’m going to be releasing you on the agreement of the parties without bail on the conditions that you make your court appearance . . . and keep in good contact with your lawyer just in case that changes.”

For unknown reasons, Epps was not immediately released from jail as required by his plea agreement; he was released the following day. At Epps’s sentencing hearing, which also was held remotely, he was represented by the same attorney who had represented him at the guilty-plea hearing. Epps moved to withdraw his guilty plea, arguing that the state had materially breached the terms of the plea agreement by not ensuring his immediate release from jail. Speaking on his own behalf, Epps told the district court that he was “a victim of government abuse of the Hennepin County judicial system.”

He noted that he had been treated unfairly in the past, as well. When the district court acknowledged that Epps should have been released from jail immediately following the guilty plea hearing, Epps thanked the district court and directed the district court to “stay independent.” He stated, “[j]ust stay independent because a judge is supposed to stay independent. Thank you. The judge has been warned to stay independent. And thank you, Your Honor, for staying independent. That is what you are supposed to do. And your ruling is supposed to be independent.”

After this exchange, the district court denied the plea withdrawal motion. Epps again asserted that he was a victim of government abuse, referencing some of his previous cases. He told the district court that he was “so upset [his] mind [was] not functioning.”

Epps’s attorney explained that Epps was frustrated, in part, due to the continued existence of the DANCO, which was against T.R.’s own wishes. The attorney submitted documents from Epps’s previous cases at Epps’s request, including a matter that was reversed on appeal. Although the attorney acknowledged that Epps could not challenge the validity of past DANCOs, he asked the district court not to issue another DANCO given T.R.’s wishes and Epps’s multiple past violations.

After hearing from Epps and Epps’s attorney, the district court sentenced Epps to a 21-month stay of execution and three years of probation. When the district court ordered Epps to participate in a domestic violence program as a condition of probation, Epps interrupted the district court’s pronouncement of the sentence, stating, “I’ve never been convicted of domestic violence.” Epps interrupted the district court a few more times, admonishing the district court to “stay independent.” When the district court granted the

state's request for a probationary DANCO, Epps stated, "I'm gone. Bye. Enough is enough. You guys need to be under investigation by the FBI. You guys are—look at the records. Look at everything that is shown. You guys are crooks." Epps then left the remote hearing.

Appeal and Postconviction Petition

After sentencing, and with the assistance of new appellate counsel, Epps filed a direct appeal to this court and then moved to stay the appeal to pursue postconviction proceedings. After we stayed the appeal, Epps filed a postconviction petition in the district court asserting two constitutional claims. Epps first claimed that, because there was reason to question his competence to proceed, the district court violated his right to due process by not ordering a competency evaluation and by allowing him to plead guilty. Second, Epps claimed that his attorney provided ineffective assistance of trial counsel by not investigating his past mental health and by failing to challenge his competence to plead guilty.

Postconviction Evidentiary Hearing

At an evidentiary hearing held on his petition, Epps called several witnesses in support of his postconviction claims and introduced multiple exhibits, including four prior competency evaluations, the transcripts of his guilty-plea and sentencing hearings, and a 2014 order denying a petition for involuntary commitment to a mental-health facility.

Epps testified first, waiving his attorney-client privilege to enable his appellate counsel to question the attorney who represented him during the guilty plea and at

sentencing. After the waiver, Epps rambled during his testimony, criticizing his trial attorney, among other things.

Next, Epps called the probation officer who had supervised him since July 2020. The probation officer testified that Epps was initially “rough” to supervise because he was easily agitated, he was focused on his past cases and injustices in the legal system, he spoke quickly, and he would not allow her to participate in their conversations. But the probation officer noted that Epps’s communication, behavior, and emotional regulation improved during the time she worked with him. The probation officer testified that she had not discussed Epps’s behavior with his trial attorney or expressed concerns about Epps’s competency.

Epps also called his trial attorney. The attorney testified that he had handled thousands of cases during his 21 years as a public defender. He has requested numerous competency evaluations on behalf of clients and has represented clients throughout the competency restoration process.

The attorney explained how he approaches the issue of competence:

[T]he issue of whether a person’s competent, to me, boils down to whether they’re actually fully understanding the proceedings, and whether they have a grasp of reality

And there are situations where I deal with people who have some history of mental illness and who suffer from different conditions that at the present time understand what we’re doing, understand who I am and what I’m supposed to do as my job, understand what the prosecutor’s job is, understand how the court process works, and are completely fluid in that, and who also have a firm grasp of the facts of their case and [what] their potential defenses are. And when I run into somebody like that, I don’t refer that person for a

competency evaluation, because I feel like they are competent to proceed. They don't need to sit through competency restoration proceedings and -- while in custody, and -- you know, so that's where I draw the line.

I think there's a line between someone who's legally incompetent and somebody who has some mental health issues or has some mental illness. And that's a line that I have to deal with, you know, probably at least every month or two, and you have to make your judgment calls there.

The attorney also responded to questions from Epps's appellate counsel about how he decides whether to seek a competency evaluation:

Q: When you're evaluating your clients on the attorney level, are you evaluating whether you believe they're competent, or are you evaluating whether you believe there's reason to doubt their competency?

A: The latter. I don't feel I can make the determination myself. It's -- but I also -- there has to [be] a point where -- preliminary to that, where I make a determination whether to refer them or not.

Q: So, when you're making that preliminary determination, what kinds of things are you factoring in?

A: Exactly what I just said. The legal standard. Does this person -- is this person engaging with me in reality with respect to what our defenses are, what the, you know, potential worst outcomes are, what our best outcomes are, what potentially is a middle outcome, are we fully grasping the facts of the case, do we understand what they are, does everything comport with reality. If we're at a point where we're dealing at arm's-length and on eye-level with those issues, then to me, that's not a person who absolutely must go and get referred for a competency evaluation under [the Minnesota Rules of Criminal Procedure].

As to Epps specifically, the attorney testified that Epps did not present as mentally ill during his representation of Epps. The attorney believed that Epps understood the guilty-plea agreement. There was no indication to him that Epps did not understand what

was happening during the plea hearing. Nothing during the attorney's meeting with Epps before sentencing caused him concern about Epps's competence. And the attorney did not question Epps's competence during the sentencing hearing.

The attorney acknowledged that he did not investigate Epps's past mental-health history. He explained that he believed that Epps had sufficient present ability to consult with him, and that Epps had a rational and factual understanding of the proceedings. The attorney testified that if he had any reason to doubt Epps's mental competence during his representation, he simply would have requested a competency evaluation.

Finally, Epps called a forensic psychologist who had evaluated Epps's competence in connection with court proceedings in 2014 and 2015. The psychologist testified that she performed four competency evaluations of Epps during that period. She found Epps incompetent to proceed three times, on January 9, 2014, July 6, 2014, and February 3, 2015, diagnosing him with "Delusional Disorder, Persecutory Type." In making that diagnosis and in determining that Epps was incompetent, the psychologist partly relied on Epps's "paranoid thinking" about the court proceedings, including Epps's concerns that court staff had altered transcripts, that hearings were not legitimately on the record because they were conducted without a court reporter, that the psychologist was secretly communicating with prison staff while interviewing Epps, and that judges were abusing their power. After evaluating Epps again on August 13, 2015, the psychologist found that Epps was competent to proceed.

The psychologist testified that she could not provide an opinion as to Epps's competence in the instant case because she did not evaluate Epps in 2021. According to

the psychologist, she cannot provide an opinion about competency based on evaluations from several years earlier. And she cannot retrospectively determine whether there was reason to doubt an individual's competence.

The state's sole witness was the prosecutor who represented the state at Epps's guilty-plea hearing. He recalled handling at least one other prosecution involving Epps. The prosecutor testified that, in his experience, Epps "is a strong-willed individual, and wants people to hear what he has to say." But he had no concerns at the guilty-plea hearing that Epps was not competent to proceed.

Order Denying Postconviction Relief

In January 2023, the district court denied Epps's petition for postconviction relief in a detailed order. The district court made extensive findings of fact and concluded that Epps had failed to establish during the postconviction proceedings that there was reason to doubt his competency at the time of his guilty-plea or sentencing hearing. Based on this determination, the district court rejected Epps's constitutional claims. The district court concluded that it did not violate Epps's right to due process by not sua sponte ordering a competency evaluation. And the district court further concluded that Epps's attorney did not provide ineffective assistance of counsel by not challenging Epps's competence to proceed. The court further concluded that Epps failed to establish that he was deprived of the effective assistance of counsel.

Following the district court's denial of his postconviction petition, Epps moved to dissolve the stay of his appeal and to reinstate the appeal, and we granted the motion.

ISSUES

- I. **Did the district court deprive Epps of his constitutional right to due process when it did not, on its own initiative, order an evaluation of Epps's competence to proceed?**
- II. **Did Epps's attorney provide ineffective assistance of trial counsel by not investigating Epps's mental-health history and by failing to challenge Epps's competence based on that mental-health history?**

ANALYSIS

Epps argues that the district court erred in denying his petition for postconviction relief. He contends that the district court deprived him of his constitutional right to due process by failing to sua sponte order a competency evaluation when there was reason to doubt his competence at the guilty-plea and sentencing hearings. And Epps argues that his attorney violated his constitutional right to the effective assistance of trial counsel by not investigating his mental-health history and by failing to request a competency evaluation.

- I. **The district court did not deprive Epps of due process when it did not, on its own initiative, order an evaluation of Epps's competence to proceed.**

Epps argues that the district court violated his due process right to not be convicted while incompetent by failing to order a competency evaluation when there was reason to doubt his competence to proceed.

“A defendant has a due process right not to be tried [and] convicted of a criminal charge if [the defendant] is legally incompetent.” *Bonga v. State*, 797 N.W.2d 712, 718 (Minn. 2011) (citing *Drope v. Missouri*, 420 U.S. 162, 171 (1975)); see *State v. Bauer*, 245 N.W.2d 848, 854-55 (Minn. 1976) (applying *Drope* in Minnesota). “[A] defendant is competent to stand trial in a criminal matter if [the defendant] has sufficient present ability

to consult with [the defendant's] lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings." *Bonga*, 797 N.W.2d at 718 (quotations omitted).

A district court must "observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial." *Drope*, 420 U.S. at 172. "Whether a court observed procedures adequate to protect a defendant's right not to be tried or convicted while incompetent is a different question than whether the defendant is incompetent." *Bonga*, 797 N.W.2d at 718 (citing *Bauer*, 245 N.W.2d at 852).

"Minnesota Rule of Criminal Procedure 20.01 provides the standard for competency in a criminal proceeding and the procedures that state courts must observe to ensure a defendant's competence." *Id.* Under rule 20.01, if a defendant, "due to mental illness or cognitive impairment[,] lacks ability to: (a) rationally consult with counsel; or (b) understand the proceedings or participate in the defense," the defendant is not competent to enter a plea, stand trial, or be sentenced. Minn. R. Crim. P. 20.01, subd. 2. The rule further provides, "If the prosecutor, defense counsel, or the court, at any time, doubts the defendant's competency, the prosecutor or defense counsel must make a motion challenging competency, or the court on its initiative must raise the issue." *Id.*, subd. 3.

Epps argues that the district court should have doubted Epps's competence and ordered a competency evaluation on its own initiative. In considering whether a district court erred in not ordering a competency evaluation, the appellate court first determines whether the evidence regarding the defendant's mental state is disputed. *Bonga*, 797 N.W.2d at 720. When, as here, the evidence is undisputed, the appellate court "review[s]

the record to determine whether the district court gave ‘proper weight to the information suggesting incompetence’ when it came to its conclusion that there was not sufficient doubt of the defendant’s competency so as to require further inquiry.” *Id.* (quoting *State v. Camacho*, 561 N.W.2d 160, 174 (Minn. 1997)). “Unless the aggregate of the evidence in the record creates a sufficient doubt of the defendant’s competence, [an appellate court] will not find error in a district court’s failure to order a [competency] evaluation.” *State v. Hallmark*, 927 N.W.2d 281, 306 (Minn. 2019) (quotations omitted).

Based on our review of the entire record, we discern no error in the district court’s decision not to order a competency evaluation on its own initiative. During the guilty-plea hearing, Epps confirmed his understanding of the plea agreement and the rights he was waiving by pleading guilty. He responded appropriately to the questions posed by the district court and his attorney. Epps admitted his guilt of the offense at issue. And the district court found that Epps entered a knowing, intelligent, and voluntary guilty plea. As the district court noted in the postconviction order, the plea hearing “proceeded in a manner similar to many plea hearings.”

At sentencing, Epps expressed his unhappiness about the extra day he spent in jail and the district court’s sentence, including the district court’s imposition of a probationary DANCO. But Epps’s remarks showed his understanding of the proceedings and the district court’s decisions. The record shows that Epps had rationally consulted with his attorney. During the proceeding, the attorney explained Epps’s positions and presented documents to the district court at Epps’s request. Although Epps admonished the district court to remain “independent” and complained that he was a “victim of government abuse,” these

remarks were not unusual for a defendant disappointed by a district court's sentencing decision. Epps's statements and behavior at the sentencing hearing demonstrated his frustration with his case and the district court's decisions. But the record from that hearing did not cast doubt on his competence to proceed.

Epps argues that the district court did not give sufficient weight to the evidence presented during the postconviction hearing, including the evidence that Epps had been found incompetent in 2014 and 2015, and the similarities between his mental state then and at the time of his 2021 guilty-plea and sentencing hearings. We disagree.

Initially, we note that the evidence presented during the postconviction evidentiary hearing was unavailable to the district court during the guilty-plea and sentencing hearings. During those proceedings, the district court properly evaluated Epps's competence to proceed based on Epps's courtroom conduct. *See, e.g., Drope*, 420 U.S. at 180-81 (concluding that the district court was unable to properly assess competence because the district court did not observe the defendant's conduct in the courtroom); *Bonga*, 797 N.W.2d at 720 (concluding that the district court properly assessed competence because the district court observed the defendant's conduct in the courtroom).

We also discern no error in the district court's postconviction decision that, even given the additional evidence presented at the postconviction evidentiary hearing, a competency evaluation was unwarranted. As the district court observed in the order denying postconviction relief, Epps was found competent in the final competency evaluation performed in 2015. Epps's attorney, who was experienced and well versed in the law governing competence, did not believe there was cause to question Epps's

competence. His longtime probation officer did not have concerns about his competence. And the experienced prosecutor present at the guilty-plea hearing did not question Epps's competence during that proceeding. None of the evidence presented at the postconviction hearing created sufficient doubt regarding Epps's competence to proceed at the time of his guilty-plea and sentencing hearings.

Epps contends that his behavior described in the 2014 and 2015 evaluations—evaluations that ultimately resulted in findings of incompetence—was similar to the behavior he exhibited at the 2021 guilty-plea and sentencing hearings. He argues that the district court failed to give appropriate weight to the details set forth in the earlier evaluations.

However, in the order denying postconviction relief, the district court expressly compared the behavior discussed in Epps's previous evaluations to his conduct during the 2021 proceedings. The district court stated that the psychologist who evaluated Epps in 2014 had evidence that Epps "believed that transcripts had been fabricated or altered, that various hearings did not happen, that [Epps] recognized [the psychologist] from a different setting, and that there was communication with staff behind [Epps's] back." And the district court determined that "none of this type of evidence was present at the time of the plea hearing and sentencing in this case, nor did [Epps's attorney] observe anything comparable." Contrary to Epps's argument, therefore, the district court meaningfully considered Epps's prior conduct in relation to his conduct in 2021.¹

¹ Additionally, in support of the argument that the district court failed to appreciate the significance of Epps's prior competency evaluations, he cites a nonprecedential case, *State*

Moreover, the district court found that Epps’s legal history explained some of the comments that he made during the 2021 guilty-plea and sentencing hearings. The district court observed that “[m]any of [Epps’s] cases have resulted in dismissals” and “[o]ther cases have resulted in reversals of [Epps’s] convictions,” and the district court provided specific examples. Based on Epps’s legal history, the district court found “it is not necessarily unreasonable for [Epps] to distrust the court system.”

Epps also cites *Drope* for the proposition that a prior finding of incompetence alone can provide reason to doubt a defendant’s competence. 420 U.S. at 180 (“[E]vidence of a defendant’s irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, *but that even one of these factors standing alone may, in some circumstances, be sufficient.*” (emphasis added)). But, as the Supreme Court explained, “[t]here are, of course, no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated.” *Drope*, 420 U.S. at 180.

Based on our review of the complete record, we determine that the district court appropriately weighed the evidence and determined that there was no reason to question Epps’s competence. Because there was not sufficient doubt as to Epps’s competency to

v. Durschmidt, A19-0833, 2021 WL 1962880 (Minn. App. May 17, 2021). We conclude that *Durschmidt* is factually distinguishable from the circumstances here, however. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential decisions are not binding but may be considered for their persuasive value).

warrant further inquiry, the district court did not violate Epps's right to due process by not ordering a competency evaluation on its own initiative.

II. Epps's attorney did not provide ineffective assistance of trial counsel by not investigating Epps's mental-health history and by failing to challenge Epps's competence based on that mental-health history.

Epps argues that the district court erred in denying his postconviction claim of ineffective assistance of trial counsel.

Under the federal and state constitutions, a criminal defendant is entitled to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. This right means “the right to the *effective* assistance of counsel.” *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (emphasis added).

In evaluating a claim of ineffective assistance of counsel, a court applies the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *State v. Ellis-Strong*, 899 N.W.2d 531, 535 (Minn. App. 2017) (citing *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013)). Under that test, a defendant must show that (1) counsel's representation was deficient and (2) the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687. “If a claim fails to satisfy one of the *Strickland* requirements, [a court] need not consider the other requirement.” *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017). The ultimate consideration is “whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.” *Strickland*, 466 U.S. at 686.

A petitioner alleging ineffective assistance of counsel must overcome the “strong presumption that counsel's performance fell within a wide range of reasonable assistance.”

Gail v. State, 732 N.W.2d 243, 248 (Minn. 2007). An attorney meets the objective reasonableness standard when the attorney “provides [the] client with the representation of an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under the circumstances.” *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (quotation omitted). Prejudice exists if there was a reasonable probability that the result of the proceeding would have been different but for counsel’s errors. *Id.*

Because the *Strickland* test involves mixed questions of law and fact, an appellate court reviews a district court’s determinations de novo. *State v. Mouelle*, 922 N.W.2d 706, 715 (Minn. 2019). “[T]o determine whether [a defendant’s] counsel was ineffective, [a reviewing court] must look to the merits of [the defendant’s] underlying claims.” *Onyelobi v. State*, 932 N.W.2d 272, 280 (Minn. 2019).

Epps asks us to adopt a new bright-line rule requiring defense counsel to affirmatively investigate a defendant’s past mental-health history, and to consider that history in determining whether to challenge the defendant’s competence. He argues that his trial attorney’s performance was deficient because the attorney failed to investigate his mental-health history, and then failed to request a competency evaluation based on that history.

We decline to adopt Epps’s proposed rule for several reasons. First, the proposed rule is in tension with the presumption of reasonableness required by *Strickland*. See *Strickland*, 466 U.S. at 690 (“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”). Second, it is inconsistent with rule 20.01 of the criminal procedure rules,

which focuses on a defendant's *present* competence. See Minn. R. Crim. P. 20.01, subd. 3; see also *Wold v. State*, 430 N.W.2d 171, 178 (Minn. 1988) (explaining that while mental illness may overlap with incompetence, mental illness does not “automatically mandate a finding of incompetence”). Third, Epps’s proposed rule would impose a significant burden on defense attorneys, particularly in cases where their clients exhibited no observable signs of mental illness or cognitive impairment.

As noted, rule 20.01 requires a defense attorney to challenge a defendant’s competence if the attorney doubts the defendant’s competence. Minn. R. Crim. P. 20.01, subd. 3. Extrapolating from this rule, when a reasonably skilled attorney would have challenged a defendant’s competence under the circumstances, a defense attorney provides deficient representation by failing to do so. See *Adebayo v. State*, A18-0940, 2019 WL 2415243, at *5 (Minn. App. June 10, 2019), *rev. denied* (Minn. Aug. 20, 2019) (stating that a defense attorney’s performance falls below an objective standard of reasonableness “if a reasonably competent attorney would have doubted [the defendant’s] competency and requested a competency evaluation under similar circumstances”). Stated otherwise, a defense attorney’s failure to challenge a defendant’s competence to proceed is deficient representation if a reasonably skilled attorney would have doubted the defendant’s competence under the circumstances. This flexible rule, rather than Epps’s proposed bright-line rule imposing an affirmative obligation to investigate a defendant’s mental health in all cases, incorporates the deference required by *Strickland*, more closely interprets the obligations imposed by rule 20.01, and provides clearer guidance for attorneys.

Applying this rule and reviewing the circumstances here de novo, we conclude that Epps's attorney did not render deficient representation. Based on the record before us, we determine that a reasonably skilled attorney would not have doubted Epps's competence to proceed. As discussed, Epps's conduct at the guilty-plea and sentencing hearings did not provide the attorney with an objective reason to doubt Epps's competence. And none of the evidence presented at the postconviction evidentiary hearing suggested that Epps was not competent when he appeared before the district court in 2021 to plead guilty and to be sentenced. Because a reasonably skilled attorney would not have questioned Epps's competence and would not have requested a competency evaluation, the performance of Epps's attorney was not deficient. Given our determination that the attorney's performance was not deficient, we need not address the second *Strickland* factor—whether Epps was prejudiced by deficient representation. *See Mosley*, 895 N.W.2d at 591.

DECISION

Because the district court did not have reason to doubt Epps's competence, the district court did not violate Epps's constitutional right to due process by not ordering a competency evaluation on its own initiative. And because a reasonably skilled attorney would not have questioned Epps's competence and would not have requested a competency evaluation, Epps's attorney did not deprive Epps of his constitutional right to the effective assistance of trial counsel by failing to challenge Epps's competence. Thus, the district court did not err in denying Epps's petition for postconviction relief.

Affirmed.